No. 20-7818
CAPITAL CASE

In the SUPREME COURT of the UNITED STATES

STEPHON LINDSAY,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

On Petition for a Writ of Certiorari to the
Alabama Court of Criminal Appeals

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

After 21-month-old Maliyah Lindsay had been missing for six days, police located her father, Stephon Lindsay, who was the last person to have seen her alive. Once located, Lindsay willingly walked onto the front porch and sat down. When approached by law enforcement and asked where Maliyah was and whether she was alive, Lindsay stated, "No, she's not okay" and "No. She is not alive." The defendant then said, "I will tell you everything in all due time, but you need to record this." Thereafter, Stephon was transported to the police department and advised of his *Miranda* rights. After waiving his rights, Lindsay confessed to the brutal murder of his daughter.

One question arises from Lindsay's petition:

Did the Alabama Court of Criminal Appeals properly apply the *Miranda* public safety exception to a fact pattern involving a kidnapped child?

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STATEMENT OF THE CASE

After stating an incriminating response to a direct question about his missing daughter's wellbeing, Lindsay was taken to the police station where he was advised of his *Miranda* rights. Lindsay now argues that his initial incriminating response about his daughter's wellbeing should have been suppressed because it was obtained in violation of his *Miranda* rights, asserting that the "public safety exception" set forth in *New York v. Quarles* is not applicable. Lindsay unsuccessfully presented this very claim on appeal to the Alabama Court of Criminal Appeals, which held that the public safety exception applied. Just as the state appellate court correctly held, Lindsay's current claim is meritless as it rests on well-settled law and has little factual significance outside of Lindsay's case. Therefore, this Court should deny Lindsay's petition for writ of certiorari.

A. The Proceedings Below

On June 12, 2013, Stephon Lindsay was indicted for one count of capital murder for brutally murdering his twenty-one-month-old daughter, Maliyah Lindsay ("Maliyah"), *see* Ala. Code § 13A-5-40(a)(15)

(1975). (C. 21.)[1] The jury, after deliberating for less than two hours (R. 2119, 2124), found Lindsay guilty of capital murder. (C. 96.)

After the penalty phase, the jury unanimously found that the State had proved its aggravating circumstances beyond a reasonable doubt and recommended that Lindsay be sentenced to death. (C. 99–101.) After remanding the case to remedy the original sentencing order, the Alabama Court of Criminal Appeals affirmed Lindsay's capital murder convictions and his death sentence. *Lindsay v. State*, CR-15-1061, 2020 WL 597353 (Ala. Crim. App. Feb. 7, 2020). The Alabama Supreme Court subsequently denied Lindsay's petition for certiorari.

B. Statement of the Facts

In the evening hours of March 5, 2013, Lindsay walked upstairs in his two-story apartment in Gadsden, Alabama, and told his girlfriend, Tasmine Thomas—who was sick in bed—that their twenty-one-month-old daughter, Maliyah, was going to stay with his niece, Tamia. (R. 1563.) Lindsay assured Thomas that he had packed a bag for Maliyah. (R. 1565.)

1. "C. ___ " refers to the clerk's record and "R. ___ " refers to the transcript on direct appeal.

After he picked up Maliyah from her playpen and carried her downstairs, Thomas went back to sleep. (R. 1565.)

Once downstairs, Lindsay placed Maliyah on the floor of the room next to the kitchen, covered her mouth with his hand (R. 1642), and used a sharp-edged weapon[2] from his knife collection to cut her throat. Lindsay's blows transected all the "strap muscles" in Maliyah's neck, "completely cut across" her jugular vein and carotid artery and cut deeply enough to reveal the spinal cord. (R. 1788, 1795, 1799.) Lindsay sliced Maliyah's neck, chest, and chin, and she had defensive wounds on her hands.[3] (R. 1786–87.) *See also Lindsay v. State*, CR-15-1061, 2019 WL 1105024, at *1 (Ala. Crim. App. Mar. 8, 2019).

Thereafter, Lindsay placed Maliyah's body in a green "tote bag," waited until midnight, and placed both the bag and the murder weapons in his car. He drove to a nearby wooded area and disposed of Maliyah's body, then disposed of the weapons in different location. Lindsay

2. In his statement to law enforcement, which was admitted on a CD as State's Exhibit 25, Lindsay initially explained that he used a knife to cut Maliyah's throat; but later, he stated that he used an axe.
3. Lindsay caused such significant "tissue shredding" that Dr. Valerie Green, who conducted the autopsy, could not tell how many times Lindsay had cut Maliyah. (R. 1788.)

returned to his apartment and thoroughly cleaned the scene with Clorox bleach and "washing powder." (*See* State's Ex. 25.)

Over the next several days, Thomas remained in bed. Meanwhile, Lindsay carried on as if everything were normal, even telling Thomas that he had seen Maliyah when his half-sister, Tippany Tolbert, came by "and gave him five dollars." (R. 1568.) At some point, Thomas told Lindsay that she wanted to see Maliyah, and Lindsay told her that he would pick her up the next day. (R. 1567.)

On March 11, six days after Lindsay murdered Maliyah, Thomas asked him "when he was going to get Maliyah, and he said he was going right now." (R. 1569.) After Lindsay had been gone for roughly three hours, Thomas telephoned Tippany, who told her that Maliyah "was just sitting around talking." (R. 1570.) When Thomas told Tippany that she was coming to pick up Maliyah, Tippany told her that Maliyah was not there, she did not know where Maliyah was, and that "she was just told to say that [Maliyah] was there." (R. 1571.) At that point, Thomas telephoned the police and unsuccessfully attempted to contact Lindsay.

Detective Wayne Hammonds, an investigator in the juvenile division of the Gadsden Police Department, was assigned to investigate

Maliyah's disappearance. In so doing, he attempted to locate Lindsay "because he was the last person seen" with Maliyah "and there had been no contact with him." (R. 1596.) On March 12, Det. Hammonds learned that Lindsay was in a house on Clayton Avenue, and when he knocked on the door, a "female came to the door" and told him that Lindsay was inside the house. (R. 1599.) When he called into the house for Lindsay, Lindsay came onto the front porch. Det. Hammonds asked Lindsay where Maliyah was and if she was okay, but Lindsay told him she was not okay. (R. 1600.) Det. Hammonds asked Lindsay if Maliyah was alive, and he responded, "No. She is not alive." (R. 1600.) Lindsay then told Hammonds that he would "tell [him] everything in all due time, but [Det. Hammonds] need[ed] to record this." (R. 1600.) According to Det. Hammonds, Lindsay was "very calm." (R. 1601.) At that point, Lindsay was transported to the investigative unit of the Gadsden Police Department, where his recorded interview was held. (R. 1601.) After Det. Hammonds advised Lindsay of his *Miranda* rights, Lindsay waived his rights and confessed to murdering Maliyah.

REASONS FOR DENYING THE PETITION

Lindsay's petition fails to meet this Court's requirement that there be "compelling reasons" for granting certiorari. *See* Sup. Ct. R. 10. Although Lindsay challenged the admission of his initial statement to law enforcement that his daughter was not okay and was not alive, he did not argue, as he does now, that the state court's decision improperly expanded the public-safety exception beyond this Court's decisions in *Miranda v. Arizona*, 384 U.S. 436 (1966), and *York v. Quarles*, 467 U.S. 649 (1984). Lindsay's new argument notwithstanding, the state court correctly determined that Lindsay's inculpatory statement was properly admitted because it fell within the public-safety exception to *Miranda*. But, perhaps more importantly, for the purposes of this Brief in Opposition, Lindsay's new argument—which Lindsay asserts is the sole "reason[] for granting the writ," (Pet. At 11)—is not even a question this Court need reach; Lindsay has failed to show he was interrogated in custody and thus that *Miranda* applies in the first place. Because Lindsay waived the argument he presses before this Court, because this case does not tee up Lindsay's asserted "reason[] for granting the writ,"

and because the state court correctly rejected Lindsay's argument below, this Court should deny Lindsay's petition.

I. Lindsay's claim that the state courts improperly expanded the public-safety exception is not preserved for review.

Because Lindsay did not raise his current challenge to the admission of his statement in state court, his claim is waived for at least three reasons.

First, because Lindsay did not challenge the admission of his statement at trial, his claim is waived under this Court's case law. *See generally Adams v. Robertson*, 520 U.S. 83, 90-91 (1997) ("Requiring parties to raise issues below not only avoids unnecessary adjudication in this Court by allowing state courts to resolve issues on state-law grounds, but also assists [in] deliberations by promoting the creation of an adequate factual and legal record."); *Pierce Cty., Wash. v. Guillen*, 537 U.S. 129, 140 (2003); *Bd. of Directors of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 549–50 (1987) ("It is well settled that this Court will not review a final judgment of a state court unless 'the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system.'") (quotation omitted).

Second, the state appellate courts reviewed Lindsay's claim for plain error only. *See Lindsay*, 2019 WL 1105024, at *15. Accordingly, even assuming state plain-error review preserved review in this Court, it did not preserve the issue Lindsay has presented to this Court—that is, whether the trial court impermissibly expanded *Miranda*'s public-safety exception. Rather, it preserved review of whether Det. Hammonds' testimony regarding his question to Lindsay about the safety and wellbeing of Lindsay's daughter warranted the trial court to overlook the absence of an objection from Lindsay and order, sua sponte, to exclude Lindsay's response that his daughter was not okay or alive. *See Webb v. Webb*, 451 U.S. 493, 498-99 (1981) ("[This] Court has consistently refused to decide federal constitutional issues raised . . . for the first time on review of state court decision."); *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969) ("It was very early established that the Court will not decide federal constitutional questions raised here for the first time on review of state court decisions.").

Finally, Lindsay is arguably raising arguments here that were not raised in the state appellate courts. In his petition, Lindsay argues that the admission of his initial statements to law enforcement that his

daughter was not okay and was not alive "under the public safety exception to *Miranda* impermissibly broadens and undermines the clear purpose of th[e] narrow exception as articulated in *Quarles*, and conflicts with several federal circuit courts." (Pet. at 14.) This argument, however, is not the same as the one presented to the state appellate courts. Lindsay generally argued in his application for rehearing that the Alabama Court of Criminal Appeals "likened" Det. Hammonds' questions to Lindsay of whether Maliyah was okay or alive "to 'general questioning of citizens in the factfinding process'" although "law enforcement had identified [him] as a suspect in his daughter's disappearance." (Lindsay's Reh'g Appl. At 32.) He asserted that, as a suspect, he should have been advised of his *Miranda* rights before being "interrogated." (*Id.*) Similarly, in his petition for writ of certiorari to the Alabama Supreme Court, Lindsay argued that:

> As a suspect in the disappearance of his daughter, [] Lindsay should have been Mirandized by police before he was interrogated regarding his daughter's well-being. Because the State did not meet its burden of proving [] Lindsay understood his constitutional rights regarding self-incrimination and 'voluntarily, knowingly, and intelligently' waived those rights, his inculpatory statement to police on the porch of the home in Clayton . . . should have been suppressed."

(Lindsay's State Cert. Pet. at 78.)

Neither Lindsay's application for rehearing nor his petition for writ of certiorari filed in the state appellate courts challenged whether application of the public safety exception to Lindsay's case impermissibly expanded that exception. As such, Lindsay did not provide the state courts an opportunity to consider his claim. *See Webb*, 451 U.S. at 498-99; *Cardinale*, 394 U.S. at 438. Consequently, this Court should deny Lindsay's petition for writ of certiorari.

II. Lindsay's claim is meritless.

Lindsay's argument centers on the premise that the public safety exception has been implicitly limited to interactions involving law enforcement and an immediate danger associated with weaponry. (*See* Pet. at 14.) He relies on this Court's decision *New York v. Quarles*, 467 U.S. 649 (1984), asserting that "this Court contemplated this exception as a narrow one, geared toward empowering police . . . to respond instinctually and with spontaneity toward immediate threats involving deadly weapons to themselves or the general public." (Pet. at 13.) He also argues that the exception is intended to allow law enforcement "to respond decisively, promptly, and with spontaneity in potentially volatile encounters with criminal suspects." (Pet. at 16.)

A. Lindsay's uncoerced statements did not result from a "custodial interrogation," so *Miranda* does not apply.

As a threshold matter, this case does not even implicate the question Lindsay presents because Lindsay has failed to show that law enforcement was required to issue *Miranda* warnings in the first place. The *Miranda* Court made clear that its holding prevented prosecutors from "us[ing] statements, whether exculpatory or inculpatory, *stemming from custodial interrogation* of the defendant unless it demonstrates the use of procedural safeguards." *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) (emphasis added). By "custodial interrogation," the Court "mean[t] questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* The Court's "subsequent decisions … stressed that it was the Custodial nature of the interrogation which triggered the necessity for adherence to the specific requirements of its Miranda holding." *Beckwith v. U.S.*, 425 U.S. 341, 346 (1976) (collecting cases). The "ultimate inquiry," therefore, "is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983). And, importantly, "[t]he mere fact that an investigation has focused on a

suspect does not trigger the need for *Miranda* warnings in noncustodial settings." *Minnesota v. Murphy*, 465, U.S. 420, 431 (1984). Indeed, the "subjective views harbored by either the interrogating officers or the person being questioned' are irrelevant." *J.D.B. v. North Carolina*, 564 U.S. 261, 271 (2011).

Here, Lindsay cursorily insists that the state investigators were required to Mirandize him prior to their initial communications on his front porch because "a reasonable person would not have felt he was 'at liberty to terminate the interrogation and leave'" and because he was a potential "suspect in the disappearance of his daughter." (Br. of Appellant at 66-67, *Lindsay v. Alabama*, CR-15-10601 (Ala. Crim. App. May 30, 2017).) Both arguments fail. First, the police neither arrested Lindsay nor restrained his movement to the degree "associated with a formal arrest." *Beheler*, 463 U.S. at 1125. Instead, Lindsay willingly exited his house to speak with the officers without any threat of coercion. (R. 1599.) The mere presence of law enforcement does not, as Lindsay implicitly contends, convert an interaction into a custodial interrogation. (Br. of Appellant, *supra*, at 66.) Moreover, the facts that law enforcement placed no physical restraints on Lindsay and that the questioning took

place at Lindsay's dwelling make clear that a reasonable person would have felt free not to answer the investigators' questions, reaffirming that no "custodial interrogation" took place. *Cf., e.g.*, *Yarboroguh v. Alvarado*, 541 U.S. 652, 664-65 (2004) (explaining absence of threats, decision not to "pressure[e] [suspect] with the threat of arrest and prosecution," "weigh[ed] against a finding that [suspect] was in custody").

Second, this Court has squarely rejected the argument that law enforcement should have Mirandized Lindsay simply because he was a "suspect in the disappearance of his daughter." (Br. of Appellant, *supra*, at 67.) *See, e.g.*, *Minnesota v. Murphy*, 465, U.S. 420, 431 (1984) ("The mere fact that an investigation has focused on a suspect does not trigger the need for *Miranda* warnings in noncustodial settings."); *Beheler*, 463 U.S. at 1124 n.2 ("Our holding in *Mathiason* reflected our earlier decision in [*Beckwith*], in which we rejected the notion that the 'in custody' requirement was satisfied merely because the police interviewed a person who was the 'focus' of a criminal investigation"). Indeed, the law-enforcement officers' subjective suspicions "are irrelevant." *J.D.B.*, 564 U.S. at 271.

The only question that matters is whether a reasonable person being asked an investigative question by an officer standing outside his dwelling would have felt a "restraint on freedom of movement of the degree associated with a formal arrest." *Beheler*, 463 U.S. at 1125 (internal quotation marks omitted). Because the answer to this question is clearly "no," Lindsay never faced a "custodial interrogation" sufficient to implicate *Miranda*. This case therefore does not require any court—much less *this* Court—to answer Lindsay's Question Presented, and on this ground alone the Court should reject Lindsay's Petition.

B. Even if the investigator's questions had constituted a "custodial interrogation" thus implicating *Miranda*, the doctrine's public-safety exception would clearly apply.

This Court's decision in *Quarles* created a public safety exception to *Miranda*, noting that it "recognized . . . the importance of a workable rule 'to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interest involved in the specific circumstances they confront." 467 U.S. at 658. This Court explained that "[t]he exception will not be difficult for police officers to apply because in each case it will be circumscribed by the exigency which justifies it," recognizing that "police officers can and will distinguish

almost instinctively between questions necessary to secure their own safety or the safety of the public and questions solely to elicit testimonial evidence from a suspect." *Id.* at 658-59. This Court noted that, if *Miranda* warnings had deterred Quarles from responding, "the cost would have been something more than merely the failure to obtain evidence useful in convicting Quarles." *Id.* at 657.

Like *Quarles*, the cost was something more than the failure of possibility obtaining an inculpatory statement. Det. Hammonds was tasked with locating a missing twenty-one-month-old child. During his extensive effort to locate her, he attempted to locate the last person seen with her—Stephon Lindsay. After locating the house where Lindsay was hiding, Det. Hammonds approached, knocked, and asked if Lindsay was inside. Because Det. Hammonds was attempting to locate and rescue a missing child, and because Lindsay was the last person to see her alive, Det. Hammonds asked Lindsay, "where Maliyah was and was she ok," to which Lindsay responded, "No, she's not okay." (R. 1600.) When Det. Hammonds asked if she was alive, Lindsay responded, "No. She is not alive. . . . I will tell you everything in all due time, but you need to record this." (R. 1600.)

Though Lindsay's responses were incriminating, the questions asked were not designed to elicit and incriminating response; rather, they were aimed only at the safety or rescue of Maliyah. As such, they were not considered an interrogation. *Cf. Baltimore City Dep't of Soc. Servs. v. Bouknight*, 488 U.S. 1301, 1303 (1988) ("There is undoubtedly a burden on Bouknight's liberty caused by her confinement, but against it must be weighed a very real jeopardy to a child's safety, well-being, and perhaps even his life."). *See also Quarles*, 467 U.S. at 657 ("We conclude that the need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination."); *United States v. Vega-Rubio*, 2:09-CR-00113, 2011 WL 220033, at *8 (D. Nev. Jan. 21, 2011) (holding the public safety exception applied to law enforcement's question about how the defendant would feel if his child was kidnapped "was necessary to protect [the young kidnapped victim] from immediate danger").

Lindsay points to the Sixth[4] and Tenth Circuits to support his assertion that the "public safety exception to *Miranda* is confined to situations involving weapons[.]" (Pet. at 14.) But contrary to Lindsay's assertion, (*see* Pet. at 15), this Court has not confined the exception to merely cases involving "immediate dangers of weapons[.]" Indeed, such a myopic reading of *Quarles* misses the entire point of *Miranda*'s public-safety exception—that is, to ensure public safety. *See Quarles*, 467 U.S. at 657 ("[T]he need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination."). Just as a gun "concealed somewhere in [a] supermarket" might pose a "danger to the public safety"—"an accomplice might make use of it, a customer or employee might later come upon it," *id.*—a twenty-one-month-old who has been missing for six days might be facing immediate

4. Notably, this Sixth Circuit has expanded its initial restrictive holding in *United States v. Williams*, 483 F.3d 425, 428 (6th Cir. 2007), which required law enforcement to have "a reasonable belief based on articulable facts that they [were] in danger," to encompass situations where weapons were no immediate threat to the officer. *See United States v. Hodge*, 714 F.3d 380, 386-87 (6th Cir. 2013) (finding that "statements made by Hodge about the pipe bomb were properly admitted under *Quarles*").

danger, and, in turn, locating the missing child as quickly as possible might mitigate this danger.

Further, as noted in Lindsay's petition, other states have expressly found that the public-safety exception applies to cases involving missing persons and kidnapping victims. (Pet. at 15 (citing *People v. Manzella*, 571 N.Y.S. 2d 875, 962-63 (N.Y. 1991), and *Jackson v. State*, 146 P.3d 1149, 1158-59 (Okla. Crim. App. 2006).) *See also People v. Treier*, 165 Misc. 2d 665, 670 (Co. Ct. 1995) (holding that statements made by a defendant to a hostage negotiator fell within the public safety exception because the defendant presented a real threat to public safety). Lindsay's argument that these decisions have somehow "erode[d] the bright line rule of *Miranda*" presupposes that *Quarles* was never intended to apply cases devoid of an immediate threat involving a weapon. As explained above, Lindsay reads a formalistic rule into *Quarles* that the case itself does not support. Moreover, police found themselves in a "kaleidoscopic situation" when they arrived at residence given that police were unaware at that point whether Maliyah was alive—and thus potentially in danger—and would only later discover that she had been brutally

murdered. Thus, this case falls within the public-safety exception and this Court should deny Lindsay's petition for writ of certiorari.

CONCLUSION

For the reasons set forth above, this Court should deny Lindsay's petition for writ of certiorari.

Respectfully submitted,

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